

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the Commission's Own Motion to Adopt New Safety and Reliability Regulations for Natural Gas Transmission and Distribution Pipelines and Related Ratemaking Mechanisms.

Rulemaking 11-02-019  
(Filed February 24, 2011)

**DECISION AWARDING INTERVENOR COMPENSATION TO  
THE UTILITY REFORM NETWORK FOR SUBSTANTIAL  
CONTRIBUTION TO DECISION 13-12-053**

<b>Claimant: The Utility Reform Network (TURN)</b>	<b>For contribution to Decision (D.) 13-12-053</b>
<b>Claimed: \$ 35,713.99</b>	<b>Awarded: \$33,493.99 (~9.38% reduction)</b>
<b>Assigned Commissioner: Florio</b>	<b>Assigned ALJ: Maribeth A. Bushey</b>

**PART I: PROCEDURAL ISSUES**

<b>A. Brief Description of Decision:</b>	Decision 13-12-053 finds that Pacific Gas and Electric Company (PG&E) violated Rule 1.1 of the Commission's Rules of Practice and Procedure by delaying by several months the correction of a material misstatement in pleadings to the Commission and by mischaracterizing the correction as routine and non-substantive "errata." The Decision fines PG&E \$14.35 million for these violations.
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**B. Claimant must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:**

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	c	Yes.
2. Other Specified Date for NOI:	N/A	N/A
3. Date NOI Filed:	June 22, 2011	Yes.
4. Was the NOI timely filed?		Yes, TURN timely filed the NOI.
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	R.11-11-008	Yes.
6. Date of ALJ ruling:	1/3/12	Yes.
7. Based on another CPUC determination (specify):	n/a	N/A
8. Has the Claimant demonstrated customer or customer-related status?		Yes.
Showing of “significant financial hardship” (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	P.10-08-016	More recent showing in R.11-11-008.
10. Date of ALJ ruling:	11/22/10	In R.11-11-008, dated January 3, 2012.
11. Based on another CPUC determination (specify):	n/a	N/A
12. Has the Claimant demonstrated significant financial hardship?		Yes, TURN has demonstrated significant financial hardship.
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.13-12-053	Yes.
14. Date of Issuance of Final Order or Decision:	12/24/13	Yes.
15. File date of compensation request:	2/24/14	Yes.
16. Was the request for compensation timely?		Yes, TURN’s request for compensation was timely filed.

**PART II: SUBSTANTIAL CONTRIBUTION****A. Description of Claimant's contribution to the final decision (see § 1802(i), § 1803(a) & D.98-04-059).**

<b>Intervenor's Claimed Contribution</b>	<b>Specific References to Intervenor's Claimed Contribution</b>	<b>CPUC Discussion</b>
TURN recommended that the Commission find that PG&E violated Rule 1.1 by delaying in correcting the record regarding the Line 147 Maximum Allowable Operating Pressure (MAOP) for over seven months.	TURN Opening Brief (OB), filed 9/26/13, pp. 1, 5-8  D.13-12-053, pp. 14-15	Accepted. <i>See</i> Comment #1, below.
TURN recommended that the Commission find that PG&E violated Rule 1.1 by submitting the misleading "errata" document to disclose its recordkeeping and MAOP errors.	TURN OB, 9/26/13, pp. 1, 3-5  D.13-12-053, pp. 15-18	Accepted. <i>See</i> Comment #1, below.
TURN recommended that the Commission levy the maximum fine for PG&E's Rule 1.1 violations.	TURN OB, 9/26/13, pp. 8-9  D.13-12-053, pp. 18-20	Accepted. <i>See</i> Comment #2, below.
TURN recommended that the Commission reject PG&E's narrow reading of the scope of the Order to Show Cause	TURN Reply Comments on Alternate Proposed Decision, 12/2/13, p. 4  D.13-12-053, pp. 20-21	Accepted. <i>See</i> Comment #3, below.

**C. CPUC Comments on Part II:**

<b>#</b>	<b>CPUC Comments</b>
1	<p>On January 26, 2011, before the Order Instituting Rulemaking was filed in R. 11-02-019, TURN and Consumer Federation of California (CFC) filed a motion in proceeding A.00-12-020, a PG&amp;E general rate case. The motion sought a "coordinated and public investigation of factors leading to the San Bruno and similar catastrophes and appropriate preventive and remedial measures." Motion, at p. 1. The motion set out an itemized basis for the requested investigation. Motion, pp. 4-12).</p> <p>The Commission's February 25, 2011 Order Instituting Rulemaking (OIR) in the current proceeding sought "to establish a new model of natural gas pipeline safety applicable to all California pipelines" but stated that "specific investigations of PG&amp;E's conduct and any penalties will take place in a different docket." OIR, at p. 1. The OIR also noted that the Commission had already begun investigating and imposing operational limitations, ordered</p>

	<p>compliance with National Transportation Safety Board directives, and taken other actions. OIR, pp. 3-4.</p> <p>TURN, in its R. 11-02-019 Opening Brief took the position, like the Commission, that PG&amp;E'S argument that no modification of D.11-12-048 was needed because Ordering Paragraph (OP) 2 of that decision required compliance with state and federal regulations, including a WAOP of 330, was wrong. Opening Brief at p. 2.</p> <p>D.13-12-053, at 15, stated: "At a minimum...the record needed to be re-opened and corrected, and for a more complete resolution, D.11-12-048 should have been modified to reflect the correct maximum allowable operating pressure." The errata submission by PG&amp;E had the "effect of concealing" and was a "continuing violation" within PU Code section 2108 and the "[v]iolation persisted for 58 days." D.13-12-053 at p. 17.</p>
2	<p>In its Opening Brief, TURN recommended that a maximum fine be levied. Opening Brief at p. 8. As noted in D.13-12-053, subsequently TURN and ORA "recommended a fine of \$12,700,000 calculated by using the statutory maximum of \$50,000 from Pub. Util. Code [sec.] 2107 multiplied by 253 days from the time PG&amp;E discovered that its application to the Commission contained errors, plus \$50,000 for filing the document as an errata." D.13-12-053 at p. 5.</p> <p>Conclusion of Law number 15 of D.13-12-053 summarized the fine imposed by the Commission on PG&amp;E in the proceeding: "For delay in submitting a filing to disclose information regarding errors in pipeline specifications for Line 147, \$50,000 per day for 229 days = \$11,450,000. For submitting a misleadingly titled and factually incomplete document on July 3, 2013, \$50,000 per day for the 58 days these shortcomings remained uncorrected = \$2,900,000. Total fine = \$14,350,000." D.13-12-053 at p. 27.</p>
3	<p>In TURN's Reply Brief, TURN argued that PG&amp;E was wrong in contending that the issue of the long delay in the timing of the submission to the Commission was outside the scope of the Order to Show Cause (OSC). Reply Brief at p. 4. In D.13-12-0531, the Commission was in accord with TURN's position. D.13-12-053 at pp. 20-21.</p>

**B. Duplication of Effort (§§ 1801.3(f) & 1802.5):**

	<b>Claimant</b>	<b>CPUC Verified</b>
<b>a. Was the Office of Ratepayer Advocates (ORA) a party to the proceeding?<sup>1</sup></b>	Yes	<b>Yes.</b>
<b>b. Were there other parties to the proceeding with positions similar to yours?</b>	Yes	<b>Yes.</b>
<b>c. If so, provide name of other parties:</b> CPUC's Safety and Enforcement Division (SED), and City of San Bruno (CSB)		<b>Yes.</b>

<sup>1</sup> The Division of Ratepayer Advocates was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96 (Budget Act of 2013: public resources), which was approved by the Governor on September 26, 2013.

<p><b>d. Describe how you coordinated with ORA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party:</b></p> <p>Although TURN and the other parties named above shared an interest in ensuring that PG&amp;E was appropriately sanctioned for its Rule 1.1 violations, each of the parties emphasized different points and made different recommendations. In the initial briefs, only TURN recommended that PG&amp;E face the maximum \$50,000 fine for its continuing (per day) violations. (ORA and CSB later endorsed TURN's proposal in their Reply Brief.) TURN's recommended total fine of \$12.7 million was the closest of all the parties to the Decision's final \$14.35 million fine. In contrast, SED proposed much lower fines (\$75,000) based on a different statutory provision, ORA initially focused on structural remedies rather than fines, and CSB did not make a specific fine proposal.</p> <p>In addition, as reflected in the entries in TURN's timesheet marked with the "Coord" (for Coordination) code, TURN and the other parties actively coordinated their efforts to minimize duplication of effort. Consequently, other parties devoted much of their time to issues on which TURN did not focus, such as attorney-client privilege issues (a focus of CSB's work), rebutting PG&amp;E's claim that SED staff was fully aware of PG&amp;E's errors (a focus of SED's pleadings), structural problems evidenced by PG&amp;E's violations (a focus of ORA), and researching and rebutting PG&amp;E's arguments regarding intent as an essential element of a Rule 1.1 violation (a focus of ORA). The coordination among intervenors was particularly evident at the oral argument in which TURN alone focused on providing a factual chronology related to PG&amp;E's violations, allowing the other intervenors to address other issues.</p> <p>For all of these reasons, TURN submits that the Commission should find that there was no undue duplication between TURN's participation and that of the other intervenors.</p>	<p><b>Agreed.</b></p>
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### PART III: REASONABLENESS OF REQUESTED COMPENSATION

#### A. General Claim of Reasonableness (§§ 1801 & 1806):

<p><b>a. Concise explanation as to how the cost of Claimant's participation bears a reasonable relationship with benefits realized through participation</b></p> <p>Although the Decision did not have a direct impact on rates, TURN would submit that its participation had an important impact on promoting compliance with the Commission's regulations and, in particular, ensuring timely, candid and complete disclosure of material utility errors that the</p>	<p><b>CPUC Verified</b></p> <hr/> <p>Verified.</p>
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<p>Commission previously relied upon in its decisionmaking. The benefits of such compliance – in terms of enhanced safety and more effective and efficient regulation – are sure to outweigh the relatively small amount of compensation that TURN claims here.</p>	
<p><b>b. Reasonableness of Hours Claimed.</b></p> <p>TURN was able to achieve its substantial contributions through the expenditure of a modest amount of time – less than 70 hours, which equates to less than two weeks of full-time work. TURN was able to be highly efficient because of Mr. Long’s considerable previous experience – in this docket and in the enforcement cases, I.11-02-016 and I.12-01-007 -- dealing with PG&amp;E pipeline safety and recordkeeping issues. As a result, despite the technical complexity of the underlying issues related to MAOP and recordkeeping, TURN did not need to retain an expert consultant. The only other attorney to incur time, Mr. Finkelstein, spent less than one hour researching a legal issue (responding to a PG&amp;E due process contention) concerning the “harmless error doctrine” that drew upon his considerable appellate expertise. TURN’s efficiency is further demonstrated by the fact that TURN’s pleadings focused on the issues of most interest to the Commission in its Decision and avoided discussions that ultimately proved extraneous to the Commission’s decisionmaking.</p> <p>TURN here only claims hours that relate to its substantial contribution on the Rule 1.1 OSC and excludes hours that were devoted exclusively to the contemporaneously issued “Substantive OSC”. Some hours that were common to both OSCs, denoted as GP (for General Preparation) in the attached timesheet, are included here because they were necessarily incurred in order to make TURN’s substantial contributions to D.13-12-053.</p> <p>TURN submits that all of the hours claimed in this request were reasonably necessary to the achievement of TURN’s substantial contributions, and no unnecessary duplication of effort is reflected in the attached timesheet.</p> <p>TURN’s request also includes 5.50 hours devoted to the preparation of this request for compensation by Mr. Long. This is a modest and reasonable figure that reflects the minimum time necessary to prepare a quality claim for compensation addressing all of the Commission’s requirements. Mr. Long has prepared this request because of his role as TURN’s attorney in this matter and his detailed knowledge of TURN’s work effort.</p>	<p>Verified. <i>But see</i> CPUC Disallowances and Adjustments, below.</p>
<p><b>c. Allocation of Hours by Issue</b></p> <p>TURN has allocated its daily time entries by activity codes to better reflect the nature of the work reflected in each entry. TURN has used the</p>	<p>Verified.</p>

following activity codes:			
Code	Description	Allocation of Time	
Rule 1.1	Work specifically related to the Rule 1.1 violations and fine amounts.	78%	
Coord	Work specifically related to coordinating participation and avoiding duplication with other intervenors.	3%	
GP	Work related to general participation in this matter, such as reviewing the OSC, and preparing for and participating in the September 6, 2013 OSC hearing.	10%	
Comp	Work related to intervenor compensation.	8%	
<p>Because the August 19, 2013 OSC only identified one issue for this portion of the proceeding – whether PG&amp;E should be sanctioned for violating Rule 1.1 – TURN did not subdivide its time devoted to the Rule 1.1 issue into other sub-issues. However, in the event the Commission would like a sub-division of this time, TURN estimates that its hours devoted to the Rule 1.1 issues break down as follows: 55% to the issue of delay in correcting the record, 35% to the issue of the misleading “errata” submission, and 10% to the size of and legal authority for the fine amounts. If the Commission believes that a different approach to issue-specific allocation is warranted here, TURN requests the opportunity to supplement this section of the request.</p>			

**B. Specific Claim:**

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
Thomas Long	2013	60.75	\$555	Pending in A.10-02-005 et al. and R.11-10-023 (see Comment 1)	\$33,716.25	56.75 [1]	\$555.00	\$31,496.25

Robert Finkelstein	2013	0.75	\$490	Pending in A.10-02-005 et al. and A.07-06-031 (see Comment 1)	\$367.50	0.75	\$490.00	\$367.50
Subtotal: \$ 34,083.75						Subtotal: \$ 31,863.75		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
Thomas Long	2014	5.5	\$277.50	½ of 2013	\$1,526.25	5.5	\$277.50	\$1,526.25
Subtotal: \$1,526.25						Subtotal: \$ 1,526.25		
COSTS								
#	Item	Detail			Amount	Amount		
	Photocopying	Expenses associated with photocopying pleadings related to the Rule 1.1 OSC in R.11-02-019			\$9.20	\$9.20		
	Computerized Legal Research	Expenses associated with computerized legal research related to legal issues raised by the Rule 1.1 OSC			\$76.15	\$76.15		
	Telephone	Telephone expense related to the Rule 1.1 OSC			\$3.68	\$3.68		
	Postage	Expenses associated with mailing pleading related to the Rule 1.1 OSC			\$14.96	\$14.96		
Subtotal: \$103.99						Subtotal: \$103.99		
TOTAL REQUEST: \$35,713.99						TOTAL AWARD: \$33,493.99		
<p>* We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Intervenor’s records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.</p> <p>**Travel and Reasonable Claim preparation time are compensated at ½ of preparer’s normal hourly rate.</p>								



Attorney	Date Admitted to CA BAR <sup>2</sup>	Member Number	Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation
Thomas Long	December 11, 1986	124776	No.
Robert Finkelstein	June 13, 1990	146391	No.

**C. CPUC Disallowances and Adjustments:**

Item	Reason
[1]	The Commission removed four hours of claimed time as excessive for Long's work involving the drafting of the Opening Brief (two hours removed as excessive), preparing comments on the Proposed Decision (one hour removed as excessive), and preparing reply comments on the Proposed Decision (one hour removed as excessive).

**PART IV: OPPOSITIONS AND COMMENTS**

<b>A. Opposition: Did any party oppose the Claim?</b>	No.
<b>B. Comment Period: Was the 30-day comment period waived (<i>see</i> Rule 14.6(C)(6))?</b>	Yes.

**FINDINGS OF FACT**

1. TURN has made a substantial contribution to D.13-12-053.
2. The requested hourly rates for TURN's representatives are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and expenses are reasonable and commensurate with the work performed.
4. The total of reasonable compensation is \$33,493.99.

<sup>2</sup> This information may be obtained at: <http://www.calbar.ca.gov/>.

**CONCLUSION OF LAW**

1. The Claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.

**ORDER**

1. The Utility Reform Network is awarded \$33,493.99.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay The Utility Reform Network the total award. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning May 10, 2014, the 75<sup>th</sup> day after the filing of The Utility Reform Network's request, and continuing until full payment is made.
3. The comment period for today's decision is waived.

This decision is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

## APPENDIX

## Compensation Decision Summary Information

<b>Compensation Decision:</b>		<b>Modifies Decision?</b>	
<b>Contribution Decision(s):</b>	D1312053		
<b>Proceeding(s):</b>	R1102019		
<b>Author:</b>	ALJ Bushey		
<b>Payer(s):</b>	Pacific Gas & Electric Company		

## Intervenor Information

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
The Utility Reform Network	2/24/2014	\$35,713.99	\$33,493.99	No	See CPUC Disallowances and Adjustments, above.

## Advocate Information

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Thomas	Long	Attorney	TURN	\$555	2013	\$555.00
Robert	Finkelstein	Attorney	TURN	\$490	2013	\$490.00

(END OF APPENDIX)